Southwestern Bell Mobile Systems

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Carol L. Tacker
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Attorney

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: FCC Docket 94-54,
Comments of Southwestern Bell Corporation

Dear Mr. Caton:

Enclosed please find the original and ten copies of Southwestern Bell Corporation's Comments for filing in FCC Docket 94-54. One copy is to be stamped, received, and the additional copies are to ensure each Commissioner receives these Comments, in accordance with the instructions in this docket.

Thank you for your assistance.

Yours very truly,

Carol Tacker

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON D.C.

In the Matter of	§	
Equal Access and Interconnection	§	CC Docket
Obligations Pertaining to	§	No. 94-54
Commercial Mobile Radio Services	§	RM 8012

To: The Commission

COMMENTS OF
SOUTHWESTERN BELL CORPORATION

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DATED: September 12, 1994

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ATTACHMENTS

SUMMARY

Equal access and mandatory interconnection obligations are neither necessary nor desirable in the commercial mobile radio services ("CMRS") marketplace, and certainly not where they apply only to a subset of the market. While the equal access regime was intended to promote competition, specifically among interexchange carriers ("IXCs"), it has had the opposite effect in the cellular market. Rather than promoting competition, it has served merely to protect the IXCs from price competition, and to impose substantial added costs on the customers of those cellular providers which are required to provide equal access ("Equal Access Cellular Providers"). As explained in these comments, the history of unequal equal access and interconnection obligations -- i.e., those which are imposed on some but not all wireless providers -- has demonstrated that they have not only failed to achieve the objectives for which they were established, but also has proven that they make no public policy sense in this increasingly competitive market.

The solution to this previous regulatory misstep is not, as the Commission has proposed in the NPRM, to extend these obligations to other CMRS providers. Although some may argue that the Commission may determine that it is required to do so by the Congressional mandate for regulatory parity, Southwestern Bell believes that the far better decision would be for the Commission to find -- as it has, in part, through its recent decision to establish a separate "Wireless Telecommunications Bureau" -- that these policies and rules, which were initially created for landline telephone service, have no place in the wireless market.

Equal access and interconnection obligations were originally intended to address "bottleneck" conditions. While the Commission plainly has the authority to impose such obligations in those (and other) circumstances, one fact is clear: the cellular marketplace and the expanding CMRS marketplace cannot be characterized as having any "bottlenecks." In the current cellular market, there is no "bottle." Two facilities-based carriers, and in many markets several resellers, are present in each market. In the very near term, the number of local wireless providers will increase significantly. Thus, the fundamental premise on which these obligations have been imposed in the past is absent from the CMRS market.

Beyond the theoretical, however, the Commission must look at how the market has performed over the past decade in the face of these obligations. What has happened, as demonstrated below and in the accompanying affidavit of Professor Jerry Hausman, is that the IXCs have not had an incentive to compete -- and have not competed -- in the provision of cellular long distance service. Rather, they have engaged in widespread price discrimination against the customers of Equal Access Cellular Providers. The explanation is simple -- since Equal Access Cellular Providers cannot purchase long distance service at wholesale rates (and pass on savings) and their customers lack the purchasing power to force individual price discounts (and, therefore, virtually all cellular long distance purchases are made from Basket 1), the IXCs retail long distance rates serve as an umbrella price, with AT&T as the price leader (and, in recent years, the "price increaser") and the other facilities-based IXCs following in lockstep.

Current wireless networks are fundamentally different from the landline telephone network at the time of the AT&T consent decree in 1984, as, indeed, is the landline network

itself. As the expert agency in the field, the Commission has the obligation to fashion rules which recognize these differences. The old landline model of a single access point for end user customers has given way to very different network structures. The wireless network today is characterized by multiple possible paths for access to and from end user customers and increasing competition among soon-to-be increasing numbers of local providers of wireless services.

Moreover, the cellular affiliates of the Bell Operating Companies ("BOC"), which traditionally have borne the burden of equal access obligations, now compete against one another in numerous markets outside their local service areas.[1]

Finally, in spite of the fact that long distance providers have lower costs of interconnection for wireless customers (due to direct connections to MTSOs and other means to avoid LECs and access charges), the IXCs have not passed these savings on to wireless customers who pay the same rates as wireless customers. In fact, the rates for Basket 1 services (those for residential and small business customers -- which account for the bulk of cellular customers) have increased in recent years. The equal access regime in the wireless context has facilitated this lack of competition for long distance services.

Southwestern Bell in the past has made clear its skepticism regarding the supposed benefits of equal access obligations in the wireless context. The best means of facilitating competition among interexchange carriers as well as wireless service providers is to allow each competitor to fully compete in the provision of bulk and retail long distance and wireless

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1 This competition among the BOCs outside of their local service areas makes plain the absurdity of out-of-region interexchange and local calling scope restrictions in the wireless context.

service. Nevertheless, if the Commission believes that it is constrained by Congress' regulatory parity mandate to impose equal access obligations on CMRS providers in addition to the existing Equal Access Cellular Providers, then the Commission should impose such obligations in the least restrictive means possible. The Commission should condition an equal access obligation for CMRS providers upon (1) a sunset provision, (2) exclude CDPD, AIN, and other non-voice services, (3) designate the largest local calling scope feasible, preferably Major Trading Areas, and (4) establish clear procedures for the immediate removal of equal access obligations from all CMRS providers once such obligations are removed from current Equal Access Cellular Providers.

At the same time, the Commission should set itself on a course toward the lifting of all such restrictions on wireless service providers, in proceedings before the MFJ Court and in Congress.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON D.C.

In the Matter of	§	
Equal Access and Interconnection	§	CC Docket
Obligations Pertaining to	§	No. 94-54
Commercial Mobile Radio Services	§	RM 8012

To: The Federal Communications Commission:

COMMENTS OF
SOUTHWESTERN BELL CORPORATION

Southwestern Bell Corporation ("SBC") on behalf of itself and its subsidiaries submits these comments in response to the Commission's Notice of Proposed Rulemaking and Notice of Inquiry[2] released July 1, 1994, concerning whether to impose equal access obligations upon Commercial Mobile Radio Services ("CMRS") providers; whether to revise the Local Exchange Carrier ("LEC") interconnection rules, and whether to impose new obligations requiring CMRS providers to interconnect with other CMRS providers.

I. INTRODUCTION

The separate statements filed by the Commissioners in this proceeding crystallize the dichotomies existing in the marketplace; dichotomies that must be reconciled in order to protect both competition and the public interest.

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[2] Notice of Proposed Rulemaking and Notice of Inquiry, CC Docket No. 94-54, RM-8012, released July 1, 1994 (hereafter referred to as "NPRM/NOI").

Commissioner Quello stated:

> "I believe that we should be asking how a competitive market for mobile communications will allow us to remove regulatory impediments rather than grafting regulatory stop-gap measures upon a family of services yet to be developed and offered by competitors to the public."[3]

Commissioner Barrett stated:

> "Rather, I believe the Commission's goal should be to develop a transition plan away from MFJ restrictions in the wireless area, and bring everyone into relative parity based on the evolution of full competition in the PCS market."[4]

Commissioner Chong stated:

> "I believe it is important for the Commission carefully to consider the evolving nature of competition in commercial radio services, generally, prior to reaching any final decisions in this proceeding regarding equal access and interconnection issues with respect to any CMRS provider."[5]

These Commissioners are properly focused on the fact that the ultimate resolution of whether imposing operational restrictions on any CMRS provider benefits the public, must be determined within the context of the competitive environment in which the affected services are provided, not in the context of the landline local exchange market that existed during the seventies.

Rather than imposing restrictions that were the ultimate outgrowth of a series of legal proceedings that began with a lawsuit filed in 1949,[6] the Commission must look towards the

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[3] See separate statement of Commissioner James H. Quello, NPRM/NOI.

[4] See separate statement of Commissioner Andrew C. Barrett, NPRM/NOI.

[5] See separate Statement of Commissioner Rachelle B. Chong, NPRM/NOI.

[6] United States of America v. Western Electric Co. & American Telephone & Telegraph Company, No. 17-49 (D.N.J. January 14, 1949).

twenty-first century and make reasoned decisions that will result in the progressive evolution of CMRS. Equal access is not the future, rather it is a step back into the past. Equal access benefits interexchange carriers, not the public. History has shown that equal access in the cellular arena has mainly benefitted only three interexchange carriers, AT&T, MCI, and Sprint, who together provide service to the overwhelming majority of all cellular customers in equal access markets. To date, the individual cellular customers are the ones who pay the price for this interexchange carrier protection through payment of premium long distance rates.[7] The MFJ court and even the Department of Justice have been convinced by interexchange carriers that they should be protected, via equal access imposition, even though the history of equal access has shown such protection is a detriment both to competition and the public interest. This misplaced protection of competitors rather than competition does not even comport with antitrust laws.[8]

The Commission should not be likewise persuaded. Rather, it should continue to protect the interest of the consuming public, not the bottom line of these competing interexchange carriers. Unless relief is forthcoming from legislative sources (a fact that cannot be relied upon by any prudent observer of the political process), the Commission has now become the final outpost for the protection of the public interest in these matters. Imposition of equal access obligations on any CMRS provider is a disservice to the public and inhibits competition. There are ample legal and factual grounds to support a Commission

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[7] See Comments, Section III D. 1, infra, wherein SBC demonstrates how large businesses with high usage may be able to leverage lower cellular long distance prices, but individual customers who do not have that ability, are made to pay for this lack of bargaining power..

[8] See Comments, Section III D. 1, infra.

decision to defer from injecting equal access into the competitive wireless market, and to recommend these restrictions be removed from RBOC-affiliated cellular carriers. (Comments, Section III C, D, E, 1.2, infra.)

As the Commission struggles with who should be obligated, and how equal access should be imposed, the inescapable conclusion is that perpetuation of this regulatory relic into the next century makes no economic sense and serves no tangible public interest goal.

Equal access is a system imposed on some cellular providers by an external source.[9] If the Commission finds it is obligated to impose equal access on all or other CMRS providers, then that imposition should be under the following conditions: (1) there should be a sunset provision; (2) the imposition should exclude CDPD, AIN and other non-voice activities; (3) the largest local calling area should be designated, preferably Major Trading Areas ("MTAs"),[10] and (4) the Commission should establish clear procedures for the immediate removal of equal access obligations from all CMRS providers once such obligations are removed from current equal access cellular providers. Further the Commission should make clear it is taking this action because it is of the opinion it must do so to achieve regulatory parity, but that it will actively support the removal of equal access restrictions on all CMRS providers in the appropriate forums so that regulatory parity can evolve to a point where no CMRS provider is equal access obligated.

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[9] United States v. AT&T et al, 552 F Supp. 131 (U.S.D.C., August 11, 1982).

[10] Broadband PCS Order, 8 FCC Rcd at 7732.

Regulatory parity is the legislative mandate the Commission sought to protect in its Second Report & Order in the dockets concerning Regulatory Treatment of Mobile Services.[11] In that proceeding, the Commission's objectives were to ensure similar services would be subject to consistent regulatory classification, and to impose reasonable levels of regulation on CMRS providers, while avoiding unwanted regulatory burdens, as required by law.[12] The Commission must continue to observe those objectives while resolving the issues raised in this proceeding and actively seek the removal of equal access restrictions on some CMRS providers so that true parity can exist in a competitive environment. With that goal in mind, SBC submits the following comments:

- CMRS providers, whether or not affiliated with a LEC, do not control any "bottleneck" facilities".[13] This is self-evident in an environment where the Commission controls and allocates the spectrum needed to provide wireless services, and where the Commission has allocated sufficient spectrum to authorize as many as six new CMRS providers to emerge as entrants into each wireless service area in the immediate future. (Comments, at Section III C., infra.)

- Without this "bottleneck," there is no necessity to impose interconnection obligations on CMRS providers, for no legitimate public interest is being threatened. Id.

- CMRS providers have forged interconnection alliances with each other where such agreements make commercial sense. The development of IS-41 "backbone" networks with the aim of providing seamless nationwide service are primary examples of these alliances. (Comments, at Section III D. 2., infra.)

- Approximately 72 percent of SBC's cellular customers who were queried in a study among a cross section of customers would prefer to have long distance provided

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[11] Regulatory Treatment of Mobile Services, Second Report & Order, Gen. Docket No. 93-252, FCC 94-31 (March 7, 1994) (CMRS Second Report).

[12] See NPRM/NOI at p. 4.

[13] This is true in any case, but is especially apparent in out-of-region areas where a LEC-affiliated cellular carrier provides service outside the region where its LEC affiliate provides local exchange service.

through their cellular carrier; while approximately 20 percent preferred long distance service as it is currently provided.[14] (Comments, at Section III, E., infra.)

- This same study indicates large calling scopes are nearly 10 times as important to customers as the ability to choose a long distance company. Id. How better to judge the interests of the public than to give them what they want? In the context of this proceeding, equal access is not what the public wants. The large local calling scopes desired by the public are the greatest incentive for CMRS providers to pass on bulk rate long distance savings by absorbing toll and creating the calling scopes that make commercial sense to the public. Id.

- To date, the typical, individual wireless long distance user has benefitted from neither the provision of resold bulk rate long distance, nor the lockstep pricing conducted by the top three long distance providers, who together provide the great majority of all long distance service in equal access-obligated cellular markets. (Comments, at Section III, D.1., infra.)

- The Commission has adequately protected CMRS providers to ensure reasonable interconnection to LECs, so additional or revised regulation is not only unnecessary at this time, but could be counterproductive. (Comments, at Section V, infra.)

- The Commission has adequately ensured CMRS providers will be required to allow the resale of services, and mandating interconnection of resellers or other CMRS providers to each other is not necessary to ensure resale activity or the adequate provision of services. (Comments, at Section IV, infra.)

II. BACKGROUND

A. Regulatory Environment

In order to resolve the issues raised by this proceeding, it is necessary to briefly comment upon the regulatory environment that is shaping the future of the wireless industry. The Commission's decisions herein are but one element of the broad scope of legal and legislative efforts that are formulating the ground rules under which CMRS providers now, and in the near future, will operate.

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[14] Cellular Long Distance Concept, Bernard Englehard & Associates, Inc. August 1994, at p. 18 (the remaining 8 percent had no preference or did not respond), Tab 2.

Three consent decrees imposed by the U. S. District Court in Washington D.C., Judge Greene presiding, determined how equal access has historically been offered, and how it will be offered following the closing of the AT&T/McCaw transaction. Those three decrees are the Modification of Final Judgment[15] that governs RBOC-affiliated CMRS providers, the GTE consent decree,[16] and the consent decree between the United States and AT&T and McCaw Cellular, which is has not yet been approved by the Court.[17] It is now time for the FCC, the expert agency in telecommunications, to address this critical issue, and to evaluate it in light of the competitive wireless arena that exists today and that will exist in the immediate future.

1. The Modification of Final Judgment

The MFJ ultimately grew out of two lawsuits initiated against AT&T by the United States. The original suit (filed in 1949)[18] complained of antitrust violations by AT&T and was settled by consent in 1956.[19] The MFJ was the result of a second suit between the same parties and was entered in 1982 and modified periodically since that date. The MFJ resulted in the divestiture of the Regional Bell Operating Companies (RBOCs) from AT&T, and set the framework for the initial imposition of equal access obligations. In an industry that at that time had only one local exchange provider, (the LEC), there was some rationale for the

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[15] United States of America v. Western Electric, AT&T et al, Slip Op. CA No. 82-0192 (August 24, 1982) (hereafter "MFJ").

[16] United States v. GTE Corporation, 603 F. Supp. 730 (U.S.D.C., 1984) (hereafter "GTE Consent Decree").

[17] United States of America v. AT&T Corporation and McCaw Cellular, pending U.S.D.C., July 15, 1994 (hereafter "AT&T/McCaw Consent Decree")

[18] United States v. Western Electric Co., No. 17-49 (D.N.J. January 14, 1949).

[19] United States v. Western Electric Co., 1756 Trade Cas. (CCH) § 68, 246 (D.N.J. 1956).

Court to buildin safeguards to promote competition in that marketplace. Indeed, it was the existence of what the Court considered to be a LEC bottleneck for exchange access which prompted the initial imposition of equal access.[20]

The Court observed in an early opinion[21] in which equal access was discussed, that AT&T's intercity competitors must obtain access from the LEC bottleneck. The Court viewed equal access obligations as the method through which to alleviate this concern. The court stated:

> "It is imperative that any disparities in interconnection be eliminated so that all interexchange and information service providers will be able to compete on an equal basis."

Id.

While cellular is not specifically mentioned in the MFJ, RBOC-affiliated cellular carriers have followed the equal access guidelines of the MFJ that require:

> "No BOC shall discriminate between AT&T and its affiliates and their products and services and other persons and their products and service in the:
>
> 3. interconnection and use of the BOC's telecommunications service and facilities or in the charges for each element of service ... ."[22]

According to the Court, AT&T conceded its share of the interexchange market was around 77 percent in 1981. Id. at p. 171. In the cellular arena, there has been little change in that market share enjoyed by AT&T, even though equal access has been offered in RBOC-

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[20] In contrast, the wireless market is not now, and never has been, subject to a bottleneck. As a result of this Commission's efforts, even the existing cellular duopoly will soon explode with competition from 4, 5 or even 6 new competitors, per cellular market.

[21] United States v. American Telephone & Telegraph Co. et al, 552 F. Supp. 131, 195 (U.S.D.C., August 11, 1982)

[22] MFJ, at II-B, 3.

affiliated cellular markets from the time that such provision was technically feasible. For instance, in the top five Block B cellular markets in which Southwestern Bell Mobile Systems, Inc. ("SBMS") is general partner, AT&T's share of interexchange subscribers ranges from a low of 76 percent (Kansas City) to a high of 88 percent (Oklahoma City).[23] In the B-band markets where McCaw Cellular Communications offers service subject to equal access obligations, due to its partnership with RBOC-affiliated cellular carriers, AT&T is the dominant interexchange carrier with more than 70 percent of the subscribers.[24]

As will be discussed in detail infra, there is no benefit to the individual customers of the interexchange carriers in these equal access cellular markets in terms of price, since these individual cellular customers lack the bargaining power of a large, corporate customer in order to negotiate discounts off premium rates.[25] Nor is there reasonable support for an argument that in the wireless arena, equal access has inspired vigorous interexchange competition. The Department of Justice in its complaint filed at the time the AT&T/McCaw Consent Decree was concurrently filed, correctly noted "AT&T is the dominant supplier of interexchange services to both landline and cellular customers in the United States." Id. at p. 1. Equal access on some cellular carriers has not changed that fact, nor is the imposition of equal access on all CMRS providers likely to do so.

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[23] See Affidavit of Jerry Hausman, p. 16.

[24] See Complaint, United States v. AT&T/McCaw Cellular Communications, Inc. CA No. 94-0155 (U.S.D.C. 1994), at p. 10.

[25] See Comments, at Section III D. 1., infra.

2. The GTE Decree

The GTE consent decree,[26] much like the MFJ, does not specifically mention cellular when discussing that company's equal access obligations. To date, GTE has not offered equal access in the cellular markets where it is a licensee or general partner of the licensee, although it does offer equal access to its landline operation. While the Court included RBOC-affiliated cellular carriers in the equal access obligation in orders subsequent to the MFJ, there have been no similar orders relating to GTE's cellular affiliates. Ironically, the DOJ has never sought to impose equal access obligations on GTE's cellular operations even in those cellular markets when GTE is the facilities-based LEC. Despite this failure, the DOJ continues to be a proponent of equal access on AT&T/McCaw, and the RBOC cellular affiliates.

3. The AT&T Decree

Finally, the AT&T/McCaw Consent Decree entered into by the United States and the parties to the AT&T/McCaw merger transaction, if approved by the Court, will for the first time impose equal access obligations on McCaw, the cellular carrier serving the largest number of population ("POPs") in the United States.[27] The equal access obligations imposed by that decree are similar to those imposed by the MFJ, with some variation on implementation dates.[28] One notable exception in this decree that is not present in the MFJ is

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[26] United States v. GTE Corporation, 603 F. Supp. 730 (U.S.D.C., December 13, 1984).

[27] Donaldson, Lufkin & Jenrette, The Wireless Communications Industry, Table 3 at p. 11 (Winter, 1994).

[28] Note, however, that AT&T/McCaw Consent Decree, unlike the MFJ or GTE Decree, is subject to a ten year sunset limitation.

that McCaw's non-voice wireless data services such as CDPD[29] are exempt from the equal access requirements set forth in the AT&T/McCaw Decree. Upon the entry of the AT&T/McCaw Consent Decree, approximately 294,494,000 POPs[30] will become subject to cellular equal access obligations.

AT&T's acquiescence to the restrictions in this decree, however, is not motivated by a desire to bring to McCaw's customers the opportunity to choose their interexchange carrier. AT&T is motivated by its own bottom line. AT&T would rather stay within its comfortable, non-competitive oligopoly and rely on equal access to ensure it will have the ability to charge individual cellular customers premium rates, than have to deal with the cellular providers on a wholesale basis. The reason for this is obvious. AT&T, and, indeed, all interexchange carriers, make far more money selling interexchange carrier services to the individual cellular customer at a rate averaging between $0.15 - 0.35 per minute, than selling in bulk to a CMRS provider at a rate averaging between $0.04 - 0.08 per minute.[31]

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[29] Cellular Digital Packet Data (CDPD) is an industry standard which allows manufacturers to produce equipment for the transmission of packetized data over cellular frequencies.

[30] This number represents the combined POPs covered by McCaw/Lin and seven RBOCs. See Donaldson, Lufkin & Jenrette, The Wireless Communications Industry, Table 3 at p. 11, (Winter, 1994).

[31] See Affidavit of Jerry Hausman, at pp. 16.

4. Pending Motions

Pending at the MFJ Court are two motions that could, if granted, have a dramatic effect on how cellular service is currently provided.[32] The Generic Wireless Waiver seeks to permit RBOC-affiliated cellular providers to provide cellular and other wireless services across LATA boundaries, subject to equal access requirements, and to expand the scope of their calling areas within limits set by Major Trading Areas ("MTAs"). SBC has separately filed in that proceeding to remove all equal access restrictions for wireless services.

The Motion to Vacate is seeking to vacate the Decree (MFJ) in its entirety and bring the Court's jurisdiction over the case to a close. While neither of these motions have yet been heard, the potential exists for a drastic restructuring of oversight at the judicial level into the provision of cellular service. The Department of Justice has filed a memorandum in the Generic Wireless Waiver proceeding that opposes the removal of equal access obligations as applied to cellular companies, while supporting RBOC resale of switched interexchange service subject to certain restrictions, including equal access and the inability to send more than 45% of the total interexchange traffic to any one interexchange carrier.

The Department recommended the Court defer consideration of the RBOC's request for modification of exchange areas pending a decision by this Commission on whether to impose equal access generally, and whether the Commission determines that MTAs or some

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[32] United States of America v. Western Electric and AT&T, CA No. 82-0192 (HHG) (U.S.D.C. June 1994), Motion of the Bell Companies for a Modification of Section II of the Decree to Permit Them to Provide Cellular and Other Wireless Services Across LATA Boundaries. (Hereafter, "Generic Wireless Waiver"), and United States v. Western Electric & AT&T, CA No. 82-10922 (U.S.D.C., July 1994) Motion of Bell Atlantic Corporation, BellSouth Corporation, NYNEX Corporation, and Southwestern Bell Corporation to Vacate the Decree (the "Motion to Vacate").

other area is the appropriate local calling scope. Thus, the Department has dodged this fundamental determination, choosing to rely upon the Commission's experience and expertise in regulating the wireless industry.

5. Pending Legislation

Overlaying both the pending judicial matters and the Commission's pending proceedings, are efforts in the legislative area to modify or supplant regulation of telecommunication companies.[33] For instance, the latest version of Senate Bill 1822 dated August 11, 1994, removes the interLATA prohibitions, providing certain conditions are met (including participation by the DOJ and the Commission) in determining there is no substantial possibility of using "monopoly" power in telephone exchange or exchange access to impede competition in the interLATA market. Id. Briefly, a separate subsidiary must be established, and the public interest, convenience and necessity standard must be satisfied. Id. Again, this legislation is still in draft stages and could change substantially prior to enactment, or could fail to become law altogether.

It is against this complex backdrop of judicial, legislative, and administrative activity that the Commission will render its decisions in this important proceeding.

B. The Development of a Competitive Wireless Market

The marketplace in which CMRS providers compete has undergone radical changes since the Commission first authorized the provision of cellular service in Chicago and

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[33] See S.1822, Communications Act of 1994, Passed by the Senate Commerce Committee on August 11, 1994.

Washington D.C.[34] The Commission's regulation of the wireless industry has consistently encouraged the protection of the public interest through competition. As the Commission itself has stated, its history of regulating mobile radio services has been " ... for the purpose of encouraging the growth of the mobile services industry so that consumers will have greater options for meeting their telecommunications needs."[35] This pro-competitive outlook has succeeded.

The award of two licenses for every service area and prevention of a single licensee from owning a significant interest in both licenses in a market insured, from the beginning, that a monopoly would not arise.[36] More recently, the Commission has encouraged the development of technologies that will directly compete with these existing cellular providers. For instance, the Commission has allowed new uses of the spectrum allocated to Specialized Mobile Radio ("SMR") and specifically decided to permit this service to compete with cellular.[37] Nextel, the leading SMR licensee, has the potential to serve over 200 million customers in at least 47 of the top 50 metropolitan markets.[38]

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[34] Application of Illinois Bell Tel. Co., 63 FCC 2d 655 (1977) Aff'd. sub. nom., Rogers Radio Communication Servs., Inc. v. FCC, 593 F 2d 1225 (D.C. Circuit Court 1978), American Radio Tel. Serv., Inc., 66 FCC 2d 481 (1977).

[35] Amendment of the Commission's Rules to Allow the Selection from among Mutually Exclusive Competing Cellular Applications Using Random Selection or Lotteries Instead of Comparative Hearings, 98 FCC 2d 175, 218 (1984).

[36] Second Report & Order, GN Docket No. 93-252, March 7, 1994, at p. 4.

[37] Request of Fleet Call, Inc. for Wavier and Other Relief to Permit Creation of Enhanced SMR in Six Markets, 6 FCC Rcd. 1533, recon. dismissed, 6 FCC Rcd. 6989 (1991).

[38] MCI Plans Big Nextel Stake as a Move into Wireless, New York Times, March 1, 1994, at p. 9. MCI Goes for 'NOW' Wireless Technology, Communications Daily, March 1, 1994, at p. 1. Since recent news stories suggest the MCI/Nextel deal may be disintegrating, it will be

With the auctions of narrowband Personal Communication Services ("PCS") to be completed this fall, and the broadband PCS auction due soon, possibly beginning as early as December 1994, more competitive entrants are assured. With these additional competitors, each market may have as many as eight providers offering wireless services. Already today, there are nearly 17,000,000 subscribers of cellular services, up from the 6,000,000 customers as recently as 1991.[39]

The Commission has acted to implement congressional objectives stated in the amendment of Section 332 of the Communications Act.[40] The first objective is to ensure that similar mobile services would be subject to consistent regulatory classification. Id. The Commission's initial step towards accomplishing this objective was to replace the common carrier/private carrier classifications with the new categories of "CMRS" and "PMRS."[41] As the Commission stated, this action was taken as a " ... comprehensive and definitive action to achieve regulatory parity."[42] This proceeding offers the Commission the opportunity to take further action in response to that legislative mandate.

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interesting to note (if that occurs) whether the lack of an ownership interest in a CMRS provider will change MCI's arguments relating to the issues of this docket.

[39] Amicus Curiae Memorandum of the Cellular Telecommunications Industry Association in support of Generic Wireless Relief, CA No. 94-0192 (HHG) (U.S.D.C., August 8, 1994), at p. 4.

[40] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI §6002(b)(2)(A), 6002(b)(2)(B), 107 Stat. 312, 392, (1993)

[41] "Private Mobile Radio Services".

[42] Second Report and Order, GN Docket No. 93-252, March 7, 1994, at p. 8.

The second objective is to establish an appropriate level of regulation for CMRS providers. Id. This proceeding is a direct outgrowth of this second objective which should be decided with both objectives in mind.

III. EQUAL ACCESS

A. Background

Equal access involves two components: access to a network "equal in type, quality and price" for all interexchange carriers, and the establishment of boundaries so that the local carriers know at what point a call must be handed-off to the customer's chosen interexchange carrier for call completion, and thus long distance charges apply. This calling scope issue is of particular interest to all wireless carriers and their customers, and will be discussed in detail, infra.

The original purpose of the MFJ equal access obligations, as stated by the Court, was to remove barriers to entry and permit unfettered competition between AT&T and the other interexchange carriers.[43] Interconnection disparities were claimed to be the result of the LEC's control of the "bottleneck" local exchange access facilities. Id. These facilities were declared "bottleneck" because there was a single certificated carrier in a given local exchange area, and LEC competitors were not taken into consideration. In stark contrast, no such "bottleneck" exists in wireless markets.

While the premise of equal access was born of the judicial system that interpreted the bottleneck theory under relevant antitrust laws, the Commission has also participated in

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[43] MFJ, 552 F. Supp. at 195-196.

promulgating regulations that imposed equal access obligations on independent LECs.[44] Therefore, all LECs are now subject to equal access obligations, based on the perceived existence of a "bottleneck" where one certificated local exchange carrier controls all access in a given area.

However, the current cellular arena presents a far different picture, one of regulatory disparity. Only the RBOC-affiliated cellular carriers provide equal access, today. Even this limited imposition of equal access has an enormous cost on the public.[45] Because it is merging with the dominant interexchange carrier, AT&T, McCaw will apparently be required to provide equal access as reflected in the AT&T/McCaw Consent Decree. GTE and all other cellular providers do not provide equal access, resulting in a fragmented pattern of service that is confusing to customers, inhibiting to competition, and that prevents the equal access obligated carrier from providing the services and calling scopes desired by its customers. For instance, as will be discussed in more detail, infra, Nextel's venture into ESMR service will cover most of the major markets in the United States by 1996. When MCI was to be one of Nextel's principal investors, the plan was for MCI to be the exclusive long distance carrier.[46]

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[44] MTS and WATS Market Structure, CC Docket No. 78-72, Phase III, 94 FCC 2d 292, 296-297 (1983); MTS and WATS Market Structure, CC Docket No. 78-72, Phase III, _____ FCC 2d 860 (1985).

[45] Professor Hausman estimates these equal access requirements currently cost consumers about $900,000,000 per year. See Affidavit of Jerry Hausman, at p. 3.

[46] Even if MCI and Nextel go their separate ways, as some news sources report, Nextel still has this potential on its own.